

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD ACHER.

Plaintiff,

v.

FUJITSU NETWORK COMMUNICATIONS,
INC.

Defendant.

CIVIL ACTION NO. 03-12099 (FDS)

**AFFIDAVIT OF DOUGLAS MOORE IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Douglas Moore, Senior Vice President in charge of Sales for Fujitsu Network Communications, Inc. ("FNC"), make the following affidavit based on my personal knowledge unless otherwise stated:

I. Background

1. Acher worked for FNC as a Senior Sales Manager from August 1993 to June 11, 2003. In his position, Acher was in my reporting structure, in my then position as FNC's Vice President of Sales. In his position, Acher was responsible for the New England District. In connection with his employment, Acher received a base salary, and he could be paid monthly incentives under FNC's incentive plan.

2. FNC's fiscal year ran from April 1st to March 31st. FNC's sales incentive plans were regularly updated and applicable to fiscal half-years. Thus, the sales incentive plan in existence at the time of Acher's termination -- i.e. for the first half of 2003 -- extended from April 1, 2003 to September 30, 2003. A true and correct copy of that incentive plan is attached at Tab 1 hereto.

3. There were two primary types of incentives Acher could earn under the Plan: one based on Quota Attainment (“QA”) and one based on Market Focus (“MF”). Both types of incentives were paid based on “bookings,” defined as “the net dollar value of all orders received within a given time period.” (See Tab 1 at 2)

4. For the MF component, each fiscal half, FNC aimed to increase the market penetration of certain products and/or services. (See Tab 1, at 3) To incentivize Acher (and others) in this effort, FNC paid a commission of .00478 for each \$1 in MF eligible bookings generated. (Id.) Eligible bookings were for the products and/or services that were designated at the start of the fiscal half year as part of the MF program. Those products or services which were part of the MF program in the first half of 2003 are in the Table attached at Tab 2 hereto.

Pertinent to Acher's bookings and MF commissions, detailed below, MF eligible products included the FNC's Flashwave 4100, 4300 and 4500 products and certain so-called "Management Products." (See Tab 2)

5. For the QA component, FNC gave Acher a "quota" of bookings to achieve for the first half of 2003. Acher's quota for the first half of 2003 was \$8 million. Page 3 of the Plan contains a Table which shows how Acher (and others) would be paid depending on his percentage achievement of that quota. (See Tab 1 at 3) For example, if by the end of April 2003, Acher had booked 30% of the \$8 million quota (or \$2.4 million), he would be paid \$70 for every 1 percent achieved, or \$2,100. (*Id.*) If, by the end of May 2003, Acher booked another \$2.4 million worth of equipment, he would then have achieved 60% of his quota (\$4.8 million/\$8 million). (*Id.*) He would thus be paid \$100 for every 1% achieved, less amounts already paid.

6. All of Acher's bookings, including bookings of MF designated products, would count toward the QA component of the Plan. Acher's bookings were tallied by including:

- (i) 100% of all direct orders originating in New England;
- (ii) For the first two months of the half year (April/May, 2003), 100% of the Plug-in-Card ("PIC") bookings on Flashwave ("FW") 4000 series and management products (e.g., software to manage the equipment) in the Northeast.

NOTE: FW 4000 was new to Verizon in April 2003. Verizon was in a trial period with the products, called a First Office Application ("FOA"). Thus, while the FOA was in progress, Acher got 100% credit for Verizon bookings on any PICS FW 4000 series products in the Northeast territory. When the FOA ended in late May, Acher resumed receiving a 28% allocation of such bookings, see (iii) *infra*; and

- (iii) 28% of the PICS not already allocated as per (ii) above and booked through the PICS warehouse in Southborough, MA (this 28% was based on an allocation which recognized that the PICS booked through this warehouse were usable through the Northeast and the New England region was deemed to represent 28% of the Northeast).

7. Under the Plan, Acher could not earn either QA or MF incentives on bookings that occurred after his date of termination. (See Tab 1 at 7)

8. As the Incentive Plan provided, both QA and MF incentives were to be pro-rated and paid through "**the last day worked.**" (See Tab 1 at 7 (emphasis added)) Acher's last day worked was June 11, 2003 ("Termination Date").

II. FNC Makes All MF and QA Incentive Payments To Acher

9. After his Termination Date, FNC made various payments to Acher for: (a) his MF incentives on bookings in April 2003 (Acher was not entitled to any QA incentives for April 2003); (b) his MF and QA incentives for May 2003; and (c) his MF and QA incentives for

eligible bookings up to June 11, 2003. A table summarizing all of these payments and the calculations which supported them is attached at Tab 3.A hereto. Evidence of such payments to Acher is attached at Tab 3.B hereto. Below, I explain in detail what is in Tabs 3.A-B.

(a) April 2003

10. A \$506.20 payment was made by direct deposit to Acher on June 13, 2003. (See Tab 3.B hereto)

11. This payment was based on MF bookings only. Specifically, there were a total of \$105,899.01 in MF qualified bookings in April 2003, for which Acher was given 100% credit (see Paragraph 6(ii), supra):

FW 4100:	\$28,000.01
FW 4300:	\$67,646.00
FW 4500:	\$10,253.00

Total:	\$105,899.01
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(See Tab 3.A) As set forth on Page 3 of the Plan, this \$105,899.01 was multiplied by .00478 to calculate Acher's MF commission for April: $\$105,899.01 \times .00478 = \506.20 . (See Tab 1 at 3)

12. Acher had bookings in April toward the QA component of the Plan but, as set forth below, his bookings amounted to only 15% of his \$8 million quota (or \$1,199,422.90). (See Tab 3.A) The \$1,199,422.90 was calculated pursuant to the allocations set forth in Paragraph 6 above as follows:

100% of bookings in New England:	\$9,279.61
100% of PICS bookings on FW 4100, 4300 and 4500 in the Northeast (<u>see</u> Paragraph 6(ii), <u>supra</u>):	\$105,899.01
28% of the remaining PICS bookings in the Northeast:	\$1,084,244.28
Total:	\$1,199,422.90

(See Tab 3.A) Under the Plan, Acher could not begin receiving a QA incentive until he achieved 25% or greater of his \$8 million quota. (See Tab 1 at 3) As such, there was no QA commission due to Acher for April 2003.

(b) May 2003

13. A \$3,095.41 payment was made by direct deposit to Acher on June 27, 2003. (See Tab 3.B)¹

¹ This \$3,095.41 payment, together with a separate \$805.54 payment described in Paragraph 26, infra, was part of one check, totaling \$3,900.95. (See Tab 3.B)

14. As set forth Tab 3.A, this payment had a \$505.41 MF component and a \$2,590.00 QA component. (See also Note 1, supra)

15. For the MF component, there were a total of \$105,735.01 in MF qualified bookings in May 2003 for which Acher received 100% credit (see Paragraph 6(ii), supra):

FW 4100:	\$3,126
FW 4300:	\$28,552
FW 4500:	\$74,057.01
Mgmt Products:	\$0.01

Total:	\$105,735.02
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(See Tab 3.A) As set forth on Page 3 of the Plan, this \$105,735.02 was multiplied by .00478 to calculate Acher's MF commission for May: $\$105,735.02 \times .00478 = \504.41 . (See Tab 1 at 3)

16. For the QA component, in May 2003, Acher achieved an additional 22% of his \$8 million quota as follows:

100% of bookings in New England:	\$8,541.46
100% of PICS bookings on FW 4100, 4300 and 4500 in the Northeast (see Paragraph 6(ii), <u>supra</u>):	\$105,735.02
28% of the remaining PICS bookings in the Northeast:	\$1,668,792.12
Total:	\$1,782,868.60

(See Tab 3.A) Adding that \$1,782,868.60 total to the 15% (or \$1,199,422.61) Acher booked in April 2003, Acher's total percentage QA achievement by the end of May 2003 was 37%. (Id.) As such, pursuant to the Table on Page 3 of the Plan, Acher's QA incentive component was 37 x \$70, or \$2,590. (See Tab 1 at 3)

(c) June 1, 2003 – June 11, 2003

17. A \$2,590.96 payment was made by direct deposit to Acher on July 25, 2003. (See Tab 3.B) This payment had an MF component of \$80.96 and a QA component of \$2,510.00. (See Tab 3.A).

18. For the MF component, there were a total of \$60,487.08 in MF qualified bookings from June 1-June 11, 2003:

FW 4100:	N/A
FW 4300:	\$9,250
FW 4500:	\$43,237.08
Mgmt Products:	\$8,000

Total:	\$60,487.08
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(See Tab 3.A) However, as set forth in Paragraph 6(ii) above, Acher was not entitled to 100% credit for these bookings (as he was in April and May), but rather the standard 28% allocation to New England. Multiplying 28% by \$60,487.08, Acher's total MF bookings from June 1-June 11, 2003 was \$16,936.38. (See Tab 3.A) Pursuant to the Plan, this \$16,936.38 figure was multiplied by .00478, which equaled \$80.96. (Id.)

19. For the QA component, from June 1-June 11, 2003, Acher achieved an additional 14% of his \$8 million quota as follows:

100% of bookings in New England:	\$142,851.84
28% of the PICS bookings in the Northeast:	\$933,565.74
Total:	\$1,076,417.58

(See Tab 3.A) Adding Acher's QA totals from April, \$1,199,422.61, and May, \$1,782,868.59, to the June total above, he now had a QA total of \$4,058,708.78. (Id.) This represented 51% of his \$8 million quota. (Id.) Pursuant to the Table on Page 3 of the Plan, Acher now could be paid a QA incentive of \$100 for every percentage achieved, or \$5,100. (See Tab 1 at 3)

20. As the Plan provided, "Each month, [participants'] quota attainment will be re-calculated, less any amount [the participant has] already been paid for that component." (See Tab 1 at 6) Thus, so as not to double-count what had already been paid to Acher for QA in May 2003 (i.e., \$2,590, see Paragraph 16, supra), Acher's QA incentive was \$2,510 (\$5,100-\$2,590) for June 2003. (See Tab 3.A)

21. Adding this \$2,510.00 QA component to the \$80.96 MF component above yields the \$2,590.96 represented by the check given to him for June. (See Tab 3.B)

III. The eSMI Sales Incentive Program And FNC's Payments To Acher Thereunder

22. Pages 4 and 5 of the Plan reflect how FNC had a third incentive program; i.e., "to reduce slow-moving and obsolete inventory." (See Tab 1 at 4-5) Specifically, Acher (and others) could become entitled to a commission on the sale of Eligible Slow Moving Inventory ("eSMI") sales. (Id.) Pursuant to the Plan, eSMI payouts "are triggered on invoice date in SAP, not the booking date." (Id. at 5) SAP was FNC's billing system.

23. In his position, Acher received 45% credit for direct sales of eSMI products in New England, but for PICS, he received less credit as that credit was shared throughout the Northeast region. Acher's allocation of the pool of eSMI monies that were generated through PICS was either approximately 12% or 13%, depending upon the work done and corresponding discretionary allocations applicable.

24. At the end of April 2003, the net value of all eSMI sales invoiced in SAP was \$40,001.00. (See Tab 4.A) As Tab 4.A shows, based on the Unit Price and Floor value of the

eSMI items sold, the total eSMI pool was \$3,621.12.² (See Tab 4.A at 1) Acher was entitled to be paid \$425.30 from that pool, a number which was calculated by adding \$406.22 (Acher's 12% share of the eSMI PICS pool) and \$19.08 (Acher's 45% share of a direct sale worth \$47.10). (See Tab 4.A at 2)

25. At the end of May 2003, the net value of all eSMI sales invoiced in SAP was \$35,982.96, yielding a eSMI sales pool of \$2,913.71. (See Tab 4.A at 1) Acher was entitled to be paid \$380.24 from that pool, a number which was calculated by adding \$376.85 (Acher's 13% share of the eSMI PICS pool) and \$3.39 (Acher's 45% share of a direct sale worth \$7.54). (See Tab 4.A at 2)

26. By June 11, 2003, FNC understood that Acher was entitled to an eSMI payment of \$805.54 (i.e., \$425.30 + \$380.24), and he was paid this amount June 27, 2003, with his May MF and QA payment of \$3,095.41. (See Moore Affidavit, Tab 3.B; see also Note 1 *supra*)

27. From June 1-June 11, 2003, the net value of all eSMI sales invoiced in SAP was \$7,818.03, yielding an eSMI sales pool of \$632.70. (See Tab 4.A at 1) Acher should have been paid \$82.57, or just over 13% of that pool (13.05% to be exact based on his allocation that month). (See Tab 4.A at 2) FNC did not pay him this amount, however, due to an error in its system. A check for \$82.57 will sent by FNC's counsel to Acher's attorney representing payment to him in full under the eSMI program. (See Tab 5 hereto)

IV. Acher Is Not Entitled To Any Further Incentive Payments For Verizon's Acceptance Of A Proposal Before His Termination Date To Purchase FNC Equipment And, As Set Forth Above, FNC Has Paid Him Those Amounts

28. Verizon Communications, Inc. ("Verizon") is a regular customer of FNC, and has been for many years. The Tabs attached hereto, for example, reflect "bookings" from Verizon in April, May and June 2003 under various programs and proposals.

29. On April 30, 2003, Verizon accepted a corporate-wide proposal selecting FNC as one of its three suppliers of certain Next Generation ("NGADM") equipment, including the FW 4100, 4300, 4500 line of products referenced above. Verizon's acceptance of the proposal did not mean that FNC had any volume commitments, nor any guarantee that Verizon would buy its products. Instead, Verizon had the discretion to decide which of the three suppliers to buy NGADM products from and no obligation to award a specific dollar amount or percentage of this business to any of the three suppliers. (See generally, Tab 6.A hereto (excerpts of Agreement between FNC and Verizon))

30. In pertinent part, the Agreement with Verizon provided:

3.1 SCOPE OF AGREEMENT Purchaser and its AFFILIATES agree to purchase on an as-ordered basis and Supplier agrees to sell, PRODUCT(S) and

² The formula used to calculate the eSMI Pool, and an example showing the application of that formula is attached at Tab 4.B hereto.

SERVICES and to license LICENSED MATERIALS, when ordered by Purchaser in accordance with the terms and conditions stated in this Agreement at the prices identified in Appendix A hereto, entitled PRICE LIST. **This Agreement is not intended and shall not be construed as a commitment on the part of Purchaser to purchase any PRODUCT(S) and SERVICES, or to purchase a license to any LICENSED MATERIALS from Supplier.** Purchaser, shall on an as-needed basis, assign Supplier as one (1) of a majority award suppliers among three (3) or fewer suppliers to satisfy requirements for PRODUCT, excluding FLM PRODUCT, to be deployed in Purchaser's regulated local exchange network. Purchaser affirms that no supplier will individually be awarded a specific dollar amount or percentage of Purchaser's NGADM business during the term of this Agreement.

(See Tab 6.A (bold, underlined emphasis added)).

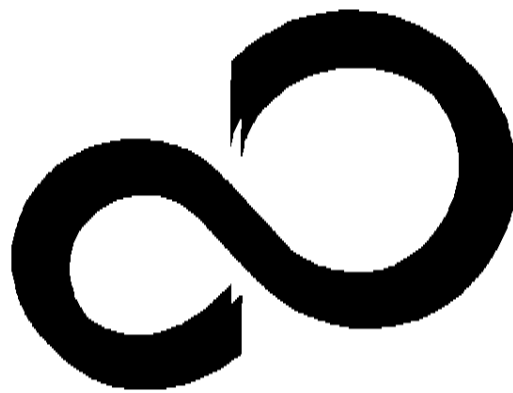
31. Any "bookings" Acher received under this Agreement (or any of FNC's other Agreements with Verizon) up to his Termination Date -- including bookings on FW 4000 series products -- were calculated into the MF and QA incentive payments made to Acher and fully detailed in Part II above.

Signed under the penalties of perjury this 10th day of March, 2005.


 Douglas Moore, Senior Vice President of Sales

TAB 1

Fujitsu Network Communications, Inc.



Sales Incentive Plan Field Sales Managers 1H2003

What's New for 1H2003

- ✓ A commission-based component, in addition to a quota-based component; commission rates vary by job; payouts are earned separately under each component and are not dependent upon each other;
- ✓ Quota assigned based on *individual* bookings only;
- ✓ Higher accelerators for above-quota performance and 25% threshold on quota-based component;
- ✓ Rate-based payout (instead of a percentage of base salary) for quota performance;
- ✓ No SPIF plan (except eSMI); and
- ✓ eSMI plan has been modified to add a cap on incentive generated from a single unit.

Understanding the Plan

As a member of the FNC sales team, you are eligible for the Sales Incentive Plan (SIP). Participants in the SIP include employees in the following positions:

- Sales Engineer (both Headquarters and Field positions)
- Sales Manager (both Headquarters and Field positions)
- Director - Sales (both Headquarters and Field positions)
- Senior Director – Sales Operations
- Vice President – Sales
- Senior Vice President - Sales

Understanding the Performance Measures

Bookings

Bookings are the net dollar value of all orders received within a given time period. This includes new orders, changes, cancellations, product returns and credit memos. Product returns are the net dollar value of all equipment physically returned to the Company. Product returns are considered negative bookings at the time they are physically returned to the Company and transacted back into inventory.

At the beginning of each half, bookings *quotas* are established for each plan participant. Quotas are established by management using criteria such as account plans, most recent forecasts, budget review plans, and past achievement records. Approval of quotas requires at least two levels of management approval (including a manager at the VP level or above).

Quotas established for individual sales team members should roll up to the VP level. For example, quotas for VPs are the sum of the quotas of their direct reports. Field Sales Engineers' quotas should add up to their Sales Manager's quota.

Quotas will not be adjusted due to price reductions. Completed or expected price reductions are considered in the budget/quota setting process.

Understanding Your Bookings Earnings Potential

There are two components to incentive compensation:

1. Quota Attainment (QA)
2. Market Focus (MF) Commission

Component #1 - Quota Attainment (QA)

At the beginning of the fiscal half, an individual bookings quota is assigned; credit towards quota is given for all products and services (including eSMI) bookings generated during the half. Based on the chart below, a dollar value is assigned to each performance level as indicated. Payout is determined by multiplying the quota attainment by the assigned rate for that performance level.

% of Quota Attained	0-24	25-49	50-74	75-99	100-109	110-119	120-129	130+
Rate per Point of Quota Attainment	\$0	\$70	\$100	\$120	\$140	\$200	\$300	\$450

Example:

% of Quota Attained	0	40	60	85	100	115	125	135
Payout	\$0	\$2,800	\$6,000	\$10,200	\$14,000	\$23,000	\$37,500	\$60,750

Component #2 - Market Focus (MF) Commission

Each fiscal half, senior management will determine which products and/or services will be designated in order to drive increased market penetration efforts – *these may vary by account*. All products and/or services included in this component will be rewarded on a *commission* basis, and commission rates vary by job and territory. The commission rate for Field Sales Managers is:

.478% for each \$1 in commission-eligible bookings generated

Example:

\$3,000,000 products/services sold x .00478 = \$14,340

At the beginning of the fiscal half, you will be provided with a listing of products/services - specific to your account – that are eligible for the Market Focus category.

Provided below is an example of a payout matrix at different bookings achievement levels.

QUOTA: \$6.2 million

% OF BOOKINGS AS MKT FOCUS PRODS/SVCS	% OF QUOTA ACHIEVED						
	25%	50%	75%	100%	110%	120%	130%
	2,491	6,482	11,223	16,964	25,260	39,550	62,353
	3,232	7,964	13,445	19,927	28,520	43,110	68,205
	3,973	9,445	15,668	22,891	31,780	46,660	70,058
	4,714	10,927	17,891	25,854	35,040	50,220	73,911
	5,455	12,409	20,114	28,818	38,300	53,780	77,763
	6,195	13,891	22,336	31,782	41,560	57,330	81,616
	6,936	15,373	24,559	34,745	44,820	60,890	85,469
	7,677	16,854	26,782	37,709	48,080	64,450	89,321
	8,418	18,336	29,004	40,672	51,340	68,000	93,174
	9,159	19,818	31,227	43,836	54,600	71,560	97,027

Other Sales Incentives

eSMI Incentive

The objective of this SPIF is to continue to reduce slow-moving and obsolete inventory.

At the end of each month, the incentive pool is calculated and determined based on two factors, (a) the floor price and (b) the premium above the floor price:

- For all SMI sales (equal to or greater than the floor price), the incentive pool is 3% of the floor price.
- For sales above the floor price, the incentive pool includes an escalating factor that is applied only to the premium (the difference between selling price and floor price); the escalating factor is defined below:

For Sales Above the Floor Price <i>(the floor is equal to 100%)</i>	Incentive Factor <i>(applied to premium only)</i>
Equal to or greater than 110% but less than 120%	5.0%
Equal to or greater than 120% but less than 130%	6.5%
Equal to or greater than 130% but less than 140%	7.5%
Equal to or greater than 140% but less than 150%	10.0%
Equal to or greater than 150% but less than 160%	12.5%
Equal to or greater than 160% but less than 170%	15.0%
Equal to or greater than 170% but less than 180%	17.5%
Equal to or greater than 180% but less than 190%	20.0%
Equal to or greater than 190% but less than 200%	22.5%
Equal to or greater than 200%	25.0%

The total incentive generated from a single unit will be capped at \$1,250 per unit.

Sales below the floor price require prior documented approval from Business Management and would likely require incremental sales of non-SMI equipment other business justification to justify/offset the lower price or. In this case, the incentive is 3% of the selling price for the qualified SMI parts. (Consider this case as a one-time reduction of the floor and thus the incentive is a straight 3% of the "floor.")

Sales incentives are calculated on qualified parts as a function of final selling price with respect to the floor price established for that part at the time of order acceptance. The floor prices are published as part of the qualified SMI listing. Not all "FNC SMI" parts are eligible for the incentive program; the parts eligible for this program are a sub-set of traditionally reported FNC SMI. Other sources of FNC SMI (the web, Operations, Order Administration, etc.) may not constitute an eligible SMI part.

Eligible SMI parts are updated the middle of each month after completion of the FNC manufacturing planning cycle. These parts are eligible SMI until the next update subject to quantity on hand (QOH) at time of order acceptance by FNC Order Administration. Should a parts' availability be depleted during the month QOH=0, it is no longer eligible for the SMI incentive program during that month. (Any additional incoming inventory that period would be based on planned needs and therefore not eligible.)

Incentive payouts are triggered on invoice date in SAP, not the booking date. The booking date is used to establish the validity of the qualified unit and the floor price. The payout is calculated and processed following the end of the monthly cycle in which the invoice was created.

Returns policy: Each salesperson is responsible for the incentives paid to him relating to subsequent customer returns for a period of 120 days from date of invoice.

eSMI earnings are capped at the amount equivalent to 100% quota attainment under the Quota Attainment component until at least 75% of quota is achieved. For example, Field Sales Managers can earn up to \$14,000 in eSMI incentive during 1H03 until they achieve 75% of their quota. Once 75% of quota is achieved, they can earn the remainder of the eSMI incentive.

Special Bookings Incentives

These incentives allow for multiple sales team members to get full or partial credit for an order or group of orders, or for a customer or group of customers. Provided below is a description of the special bookings incentives offered for 1H03:

- ◆ 4010 product bookings will be given double bookings credit on the MF commission component. For example: for every \$1 in 4010 bookings generated, you will receive \$2 credit on the commission component.

Account Transfers

In the event an account is transferred from one Field Sales Manager to another, the following rules will apply:

- ◆ If an account is transferred from one Field Sales Manager to another, then both would receive full commission on post-transfer sales – **only for the remainder of the fiscal half**. For example, Sales Manager A calls on an account and receives an order of \$100,000 (for purposes of illustration, assume that this order is all MF-eligible products). Then, the account is transferred to Sales Manager B, who then generates from that account an additional \$200,000 in bookings (again, assuming all are MF-eligible bookings) for the remainder of the fiscal half. Provided below is an illustration of how the incentive would be paid to each Sales Manager:

Sales Manager A	Receives .00478 commission on \$100,000, <i>plus</i> Receives \$100,000 credit against Quota Attainment, <i>plus</i> Receives .00478 commission on \$200,000
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Sales Manager B	Receives .00478 commission on \$200,000, <i>plus</i> Receives \$200,000 credit against Quota Attainment
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- ◆ If a new customer lead is generated and passed from Field Sales Manager A to Field Sales Manager B (with no orders generated by Sales Manager A), then Sales Manager A would receive a lead generation bonus in the amount of \$750 gross, upon \$100,000 in bookings generated from the account during the first 6-month period after the lead is passed to Sales Manager B. At the discretion of Sales Manager B, Sales Manager A must set up an initial meeting with the customer.

Understanding the Procedures

At the end of each month, your actual performance against quota will be calculated. In addition, your commission will be calculated based on the amount of eligible products/services booked during the month. Based on these calculations, you may be eligible to receive a SIP payout. For the Quota Attainment component, your performance to date will be calculated against your fiscal half quota. Each month, your quota attainment payout will be re-calculated, less any amount you have already been paid for that component.

General Rules Regarding Eligibility

NEW HIRES	QA component pro-rated based on date of hire; quota will be established within 30 days of hire. MF component paid based on MF-eligible bookings generated from date of hire to end of fiscal half.
TRANSFER/ PROMOTION INTO ELIGIBLE POSITION	QA component pro-rated based on date of transfer/promotion; quota will be established within 30 days of effective date. MF component paid based on MF-eligible bookings generated from date of transfer to end of fiscal half.
PROMOTIONS OR TRANSFERS FROM SALES TO ANOTHER SALES JOB	If you change positions during the fiscal half, your Director or VP will need to establish new SIP quota(s) for your new position. At the end of the half, your achievement of quota(s) will be calculated. The results will be prorated based on your length of time during the half in each position.
TRANSFER/ PROMOTION OUT OF ELIGIBLE POSITION	QA component pro-rated based on time in position and based on performance as of last day of eligibility. MF component paid based on MF-eligible bookings generated from beginning of fiscal half to transfer date.
LEAVES OF ABSENCE	If LOA is 30 days or less, then pro-rating rules do not apply; if LOA is more than 30 days, then the VP must review and determine whether or not to adjust the quota or to allow credit for MF-eligible bookings.
TERMINATION- VOLUNTARY, INVOLUNTARY, RIF	QA component pro-rated based on time with the company and based on performance as of last day worked. MF component paid based on MF-eligible bookings generated from beginning of fiscal half to last day worked.

Plan Evaluation and Revisions

Sales Management, in conjunction with the Human Resources department, will review plan performance regularly.

These guidelines do not constitute a contract for employment or a guarantee of current or future employment with Fujitsu either expressed or implied. If there are any inconsistencies between these policies and state, local, or federal laws, the applicable law will prevail. The Company reserves the right to amend, clarify, change, or terminate these sales plans and policies at any time. If changes are made, the Company will endeavor to notify those who are affected by the change.

TAB 2

2H04 Product Hierarchy Assignments - Eastern Region Sales

Market Focus (Commission)	
FASST - Africa, Hammerhead	
Multiplier: 1.00	
Product Hierarchy	Description
001000550061100000	Africa A100
001000550061110000	Africa A2000
001000550061120000	Africa A4000 / A8000
001000550061130000	Aspen
0010005500*	DATA PRODUCTS

Market Focus (Commission)	
NETSMART	
Multiplier: 1.00	
Product Hierarchy	Description
1000100015600000	NETSMART 1500

Market Focus (Commission)	
Technical Services	
Multiplier: 1.00	
Product Hierarchy	Description
0010000100	FNC Technical Services
001000010001000000	FNC Educational Svcs
001000010002000000	FNC Field Services
001000010003000000	FNC TAC Services
001000010004000000	FNC LAB Access (CRG)
001000010005000000	FNC PCN Upgrade Services
00300020004000000	Test and Turn Up
003000200050000000	Other EF&I
0030002000	Technical Operations
003000200001000000	Educational Services
003000200002000000	Field Services
003000200003000000	TAC Services
003000200004000000	Lab Services
003000200005000000	FNC PCN Upgrade Services
003000200021000000	Test & Turn-Up
003000200021100000	Fiber Pre-Qualification
003000200023010000	Transmission Repairs
003000200023020000	Switching Repairs
003000200023050000	SDH Repairs
003000200024000000	Training
003000200025010000	TAC (NMS)
003000200025020000	TAC (Transport)
003000200025030000	NOC Services
003000200025040000	netSpares
003000200025050000	netResponse
003000200025060000	netMigration
0030002000250650000	netRestore
00300020002506530000	Network Design
00300020002506540000	Program Management
00300020002506550000	Interoperability Testing
00300020002506560000	netDiscover
00300020002506570000	TAC (Transport)
0030002000	Professional Services
003000200001000000	Professional Services
003000200023000000	PCN's
003000200023020000	Repair Services
0030002000*	NOC Services

Market Focus (Commission)	
FW 4800, FW 7500, FW 7410, FW 7420, BTI	
Multiplier: 1.00	
Product Hierarchy	Description
1000140017100000	FLASHWAVE 7500
001000140017500000	BTI
1000140017300000	FLASHWAVE 7410
1000140017350000	FLASHWAVE 7420
001000540015330000	PCD - FW 4500
001000080015330000	FLASHWAVE 4500
001000080015351533	NBO - FLASHWAVE 4500

Market Focus (Commission)	
FW 4100, FW 4010, FW 4020, FW 4300, FW 4xxx H/W, PCD 4xxx	
Multiplier: 1.00	
Product Hierarchy	Description
001000080015130000	FLASHWAVE 4100
001000080015140000	FLASHWAVE 4010
001000080015150000	FLASHWAVE 4020
001000080015230000	FLASHWAVE 4300
001000080015310000	FLASHWAVE 4000 H/W
001000080015351523	NBO - FLASHWAVE 4300
001000940015130000	PCD - FW 4100
001000940015140000	PCD - FW 4010
001000940015150000	PCD - FW 4020
001000940015230000	PCD - FW 4300
001000940015310000	PCD FW 4xxx

TAB 3.A

Monthly Bookings - APRIL					Monthly Bookings - MAY					Monthly Bookings - June 1 thru June 11				
Area / Product		Quota Bookings	Portion of Quota Bookings for MFP Component (100%)	PICS (28%)	Area / Product		Quota Bookings	Portion of Quota Bookings for MFP Component (100%)	PICS (28%)	Area / Product		Quota Bookings	Portion of Quota Bookings for MFP Component (100%)	PICS (28%)
New England (Direct Orders)		9,279.61			New England (Direct Orders)		8,341.46			New England (Direct Orders)		142,851.84		
Manuals		0.04			Manuals					Manuals				
FLM 150 ADM		1,618.00			FLM 150 ADM		511.97			FLM 150 ADM		23,590.92		
FLM 600 ADM		4,671.00			FLM 600 ADM					FLM 600 ADM		48,810.75		
FLM 2400 ADM		2,990.57			FLM 2400 ADM		7,829.49			FLM 2400 ADM		70,450.17		
Northeast Hdqtrs (PICS)		3,978,200.00	105,899.01	1,084,244.28	Northeast Hdqtrs (PICS)		6,085,706.86	105,735.02	1,668,792.12	Northeast Hdqtrs (PICS)		3,334,163.36		933,565.74
Manuals		0.01		0.00	Manuals		0.01		0.00	Manuals		0.08		0.02
FLM 150 ADM		1,427,317.04		399,648.77	FLM 150 ADM		3,612,411.77		1,011,475.30	FLM 150 ADM		1,022,123.16		286,194.48
FW 4100		28,000.01	28,609.01		FW 4100		3,126.09			FW 4100			n/a	
FLM 600 ADM		1,268,692.51		355,231.10	FLM 600 ADM		1,313,685.84		367,832.04	FLM 600 ADM		1,421,226.18		397,943.33
FW 4300		67,646.00	67,646.00		FW 4300		28,552.09		28,552.00	FW 4300		9,250.00	n/a	2,590.00
FLM 2400 ADM		1,166,931.43		326,740.80	FLM 2400 ADM		1,033,874.25		289,484.79	FLM 2400 ADM		830,326.86		232,491.52
FLASH 192		9,370.00		2,623.60	FLASH 192					FLASH 192				
FW 4500		10,253.00	10,253.00		FW 4500		74,057.09		74,057.00	FW 4500		43,237.08	n/a	12,106.38
FLASH 192 HW					FLASH 192 HW					FLASH 192 HW				
Mgmt Products					Mgmt Products		0.01		0.02	Mgmt Products		8,000.60		2,240.00
Products eligible for MF Commissions					Products eligible for MF Commissions					Products eligible for MF Commissions				

Monthly Payouts

MPF Rate: 0.004780

Month	Direct Orders	PICS Allocation (28%)	FLASHWAVE PICS Allocation (100%)	Total Bookings Towards Quota	Quota Achieve %	MPF Direct Orders	MPF PICS Allocation (28%)	MPF FLASHWAVE PICS Allocation (100%)	Total MPF Bookings	Quota Payout	MPF Payout	Total Payout Earned
April	9,279.61	1,084,244.28	105,899.01	1,199,422.90	15%	-	-	105,899.01	105,899.01	\$ -	\$ 506.20	\$ 506.20
May	8,341.46	1,688,792.12	105,735.02	1,782,968.60	22%	-	-	105,735.02	105,735.02	\$ 2,590.00	\$ 505.41	\$ 3,085.41
June	142,851.84	933,565.74	-	1,976,417.58	14%	-	16,936.38	-	16,936.38	\$ 2,610.00	\$ 80.96	\$ 2,590.96

TAB 3.B

Professional Payroll - Company Menu

File PayData Stock Reports Transfers Help

View Check

Check # **D421204** Date **08/13/2003** Emp ID **002383** SSN **01-5-44-0287** Gross Pay **NANNA**

Pay To **ACHER, DONALD R** Home Div **00** Home Dep **9920** Sup **704**

Gross **506.20** Deductions **50.82** Taxes **145.58** Dir Dep **310.98**

Code	Descr	Rate	Hours	Amt	Ytd
C	COMMISSN	0.0000	0.00	506.20	19144.87

Code	Descr	Amt	Ytd
LTD	LTD	1.01	153.48
4	401K PLN	50.82	8617.88
DRA	DRA CONT	17.72	3019.64
X4K	401KER	8.86	1520.93

Code	Amt	Ytd	Taxable Wages	Eligible Wages
USFIT	113.90	19364.25	455.58	455.58
USFICA	0.00	5394.00	0.00	506.20
USFMED	7.34	1286.78	506.20	506.20
MASIT	24.15	3990.42	455.58	455.58
MAVDI	0.00	512.24	0.00	506.20

Type	Amt	Transit	Acct
Checking	310.19	011302357	7942060

Help ER Taxes OK

File PayData Status Resources Transfer Query Help

View Check

Check # **D423096** Date **08/27/2003** Emp ID **002383** SSN **015-44-0287** SSN SUI **MAWA**

Pay To **ACHER, DONALD M** Home Dir **00** Home Dir **8820** Pay **705**

Gross **3900.96** Deductions **0.00** Net **238.55** Drop **2652.41**

Code	Descrip	Rate	Hours	Amt	Ytd
C	COMMISSN	0.0000	0.00	3095.41	22240.28
SPI	SPIF PAY	0.0000	0.00	805.55	1848.82

Code	Descrip	Amt	Ytd
------	---------	-----	-----

Code	Amt	Ytd	Taxable Wages	Eligible Wages
USFIT	875.24	24354.78	3900.96	3900.96
USFICA	0.00	5394.00	0.00	3900.96
USFMED	56.58	1638.11	3900.96	3900.96
MASIT	208.75	5160.89	3900.96	3900.96
MAVDI	0.00	512.24	0.00	3900.96

Type	Amt	Transit	Acct
Checking	2662.41	011302357	7942060

Help ER Taxes OK

Professional Payroll - Company Menu

File PayData State Reports Transfer Utility Help

View Check

Check# **D425758** Date **07/25/2009** Emp ID **002383** SSN **015-44-0287** S/Su **NAMA** **Close**

Pay To **ACHER, DONALD M** Home DN **00** Home Dpt **9820** Rgn **1708**

Gross **2590.96** Deductions **0.00** Net Pay **822.63** DirDep **1768.33**

Earnings

Code	Descrip	Rate	Hours	Amt	Ytd
C	COMMISSN	0.0000	0.00	2590.96	24931.24

Deductions

Code	Descrip	Amt	Ytd
------	---------	-----	-----

Employee Taxes

Code	Amt	Ytd	Taxable Wages	Eligible Wages
USFIT	847.74	25007.52	2590.96	2590.96
USFICA	0.00	5394.00	0.00	2590.96
USFMED	37.57	1675.68	2590.96	2590.96
MASIT	137.32	5298.00	2590.96	2590.96
MAVDI	0.00	512.24	0.00	2590.96

Direct Deposit

Type	Amt	Transit	Acct
Checking	1768.33	011302357	7842060

Help ER Taxes OK

TAB 4.A



Eligible SMI Activity Report - April 2003
Create date: 04/01/2003 to 04/30/2003

Sales Office	Product Hierarchy Description	Sales Manager	Sold-to	Sold-to Name	Material	Sales Order	Invoice Qty	Purchased eSM Qty	Net Value	Unit Price	Unit Floor	Incentive Factor	Sales Pool	Incremental Price	Escalating Factor	Total Comp Pool	Sales Pool	Diff	
2104	100000015300000 FLM 2400 ADM	Acher	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	314588	1		526.00	526.00	283.00	20	\$ 47.10	241.00	154.5614035	20%	\$ 58.73	\$ 47.10	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	310638	3		915.00	305.00	165.00	20	\$ 82.05	140.00	184.8484848	20%	\$ 98.85	\$ 82.05	\$ 0.00
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	310639	3		915.00	305.00	165.00	20	\$ 82.05	140.00	184.8484848	20%	\$ 98.85	\$ 82.05	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	310640	4		1,220.00	305.00	165.00	20	\$ 109.76	353.00	184.2723065	20%	\$ 131.50	\$ 109.76	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	310651	7		5,485.00	785.00	425.00	20	\$ 691.41	353.00	184.2723065	20%	\$ 592.00	\$ 491.41	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	314384	2		1,370.00	785.00	425.00	20	\$ 140.40	353.00	184.2723065	20%	\$ 189.16	\$ 140.40	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	314389	1		785.00	785.00	425.00	20	\$ 70.20	353.00	184.2723065	20%	\$ 84.38	\$ 70.20	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	314398	2		1,370.00	785.00	425.00	20	\$ 140.40	353.00	184.2723065	20%	\$ 189.16	\$ 140.40	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	318198	11		8,633.00	785.00	425.00	20	\$ 778.42	353.00	184.2723065	20%	\$ 937.86	\$ 778.42	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	318287	2		1,449.40	785.00	425.00	20	\$ 1,415.32	353.00	184.2723065	20%	\$ 1,705.20	\$ 1,415.32	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	320845	20		15,700.00	785.00	425.00	20	\$ 1,415.32	400.00	671.4285714	25%	\$ 51.05	\$ 42.37	\$ (0.00)
2100	100000015300000 FLM 2400 ADM	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	319342	5		235.00	47.00	7.00	25	\$ 42.37	40.00	671.4285714	25%	\$ 10.21	\$ 6.47	\$ (0.00)
2101	100000015300000 FLM 2400 ADM	Shoggy	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	316849	1		47.00	47.00	7.00	25	\$ 73.11	107.00	184.2342942	20%	\$ 68.12	\$ 73.14	\$ (0.00)
2101	100000015300000 FLM 2400 ADM	Shoggy	10615	Sub-Total: Verizon - Bell Atlantic North			64	0	44,991.00				\$ 1,671.12			\$ 4,362.41	\$ 3,621.11	\$ (0.00)	
																	Amount Paid Out: \$ 3,259.92		
																	Less 10% Held out for Sales Mng \$ 362.11		

Eligible SMI Activity Report - May 2003
Create date: 05/01/2003 to 05/31/2003

Sales Order										Purchased		Incentive				Incremental		Diff	
Product Hierarchy	Sales Office	Sales Mgr	Sold-to	Sold-to Name	Material	Order Qty	eSM Qty	Net Value	Unit Price	Unit Floor	Factor	Sales Pool	Price	Escalating Factor	Total Comp Pool	Sales Pool			
10000001530000 FLM 2400 ADM	2104	Acher	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	320450	1	46.53	46.53	7.00	25	\$ 7.94	39.53	664.7142857	25%	\$ 10.09	\$ 5.76	\$ (0.54)	
10000001530000 FLM 2400 ADM	2100	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	319337	1	47.00	47.00	7.00	25	\$ 7.63	40.00	671.4285714	25%	\$ 10.21	\$ 8.47	\$ (0.56)	
10000001530000 FLM 2400 ADM	2100	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	319344	2	94.00	47.00	7.00	25	\$ 15.25	40.00	671.4285714	25%	\$ 20.42	\$ 16.95	\$ (1.65)	
10000001530000 FLM 2400 ADM	2100	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607SV88	320963	6	4,662.99	777.15	422.00	20	\$ 378.10	355.15	184.1587678	20%	\$ 502.14	\$ 416.76	\$ (41.86)	
10000001530000 FLM 2400 ADM	2100	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607SV88	322110	10	7,771.50	777.15	422.00	20	\$ 623.16	355.15	184.1587678	20%	\$ 853.90	\$ 694.53	\$ (169.45)	
10000001530000 FLM 2400 ADM	2100	PICS	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607SV88	322988	30	23,314.50	777.15	422.00	20	\$ 1,875.49	355.15	184.1587678	20%	\$ 2,510.70	\$ 2,063.58	\$ (208.39)	
10000001530000 FLM 2400 ADM	2102	Shoggy	10615	VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	321282	1	46.53	46.53	7.00	25	\$ 7.64	39.53	664.7142857	25%	\$ 10.09	\$ 6.38	\$ (0.84)	
10000001530000 FLM 2400 ADM	2102		10615	Sub-Total: Verizon-Bell Atlantic North		51		35,882.96				\$ 2,913.71			\$ 3,900.56	\$ 3,237.46	\$ (323.75)		
																	Less 10% Held out for Sales Mng	\$ 362.11	
																	Amount Paid Out:	\$ 2,913.71	

Eligible SMI Invoice Activity for Original ATP
Create date: 06/01/2003 to 06/30/2003

Product Hierarchy	Product Hierarchy Description	Sales Office	Sales Manager	Sold-to Name	Material	Sales Order	eSM Qty	Purchased eSM Qty	Net Value	Unit Price	Unit Floor	Incentive Factor	Sales Pool	Incremental Price	Escalating Factor	Total Comp Pool	Sales Pool	Diff	
100000015300000	FLM 2400 ADM	2100	PICS	10615 VERIZON-BELL ATLANTIC - NORTH	FC9607SMB9	322555	10		7,771.50	777.15	422.00	20	\$ 7.54	\$ 385.15	664.7142857	25%	\$ 10.09	\$ 8.38	\$ (0.84)
100000015300000	FLM 2400 ADM	2100	PICS	10615 VERIZON-BELL ATLANTIC - NORTH	FC9607TCN1	322429	1		46.53	46.53	7.00	25	\$ 7.54	\$ 39.53	664.7142857	25%	\$ 10.09	\$ 8.38	\$ (0.84)
							11	0	7,818.00				\$ 632.70						
																			Amount Paid Out: \$ 532.70
																			Less 10% Held out for Sales Mng \$ 70.50

TAB 4.B

Eligible SMI Activity Report - April 2003
Create date: 04/01/2003 to 04/30/2003

eSMI EXAMPLE PAGE

Product Hierarchy	Product Hierarchy Description	Profit Ctr	Sales Org	Sales Office	Sales Manager	Sales to	Sold-to Name	Material	Contract Date	Invoice	Sales Order	Doc Type	Item Catg	Item	Invoice Qty	Purchased eSMI Qty	Net Value	Unit Price	Unit Floor	Incentive Factor	Sales Pool	Comments
10000001530000	FLW 2400 ADM	9921	9921	2104	Archer	US615	VERIZON-BELL ATLANTIC - NORTH	FCW820HSSI-HS	4/8/2003	9668722	314868	OR	TAN	20	1		526.00	526.00	285.00	20	47.10	

Calculating the Pool:

- 1 Incremental Price Difference = Unit Price - Unit Floor
- 2 Escalating Factor = (Unit Price / Unit Floor) * 100
Refer to the Escalating Factor chart in the Plan Doc to determine the actual Incentive factor
- 3 If Unit Price < Unit Floor, the total compensation pool = (unit price * quantity) * 3%
- 4 If Unit Price > Unit Floor, total compensation pool = (unit Floor * quantity) * 3% + (incremental price * qty) * escalating factor
- 5 Sales Compensation Pool = Total Compensation Pool * 83%

Example:

- 1 Incremental Price = 526.00 - 285.00 = 241.00
- 2 Escalating Factor = (526.00 / 285.00) * 100 = 184.5614 => 20%
- 3 Total Comp Pool = -(285.00 * 1) * 3% + { (241.00 * 1) * 20% }
= 8.55 + 48.20 = 56.75
= 56.75 * 83%
= 47.10
- 4 Sales Pool =

TAB 5



**FOLEY & LARDNER LLP
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CLIENT/MATTER NUMBER
304147-0139

March 11, 2005

BY OVERNIGHT MAIL

Gary H. Goldberg, Esq.
Attorney at Law
120 Main Street
Worcester, Massachusetts 01608

Re: Acher v. Fujitsu Network Communications, Inc. ("FNC"):Civil
Action No. 03-CIV-12099 (FDS)

Dear Attorney Goldberg:

Pursuant to Paragraph 27 of the Affidavit of Douglas Moore in Support of Defendant's Motion for Summary Judgment, enclosed please find payment to Mr. Acher of \$82.57, representing his Eligible Slow Moving Inventory incentive payment for June 1-June 11, 2003.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey M. Rosin'.

Jeffrey M. Rosin

cc: Barry A. Guryan, Esq.
Melanie Scofield, Esq.

THE FRONT OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

"00009574" 11001150: "08805071485"

Employee	Id	Social Security	Status	Exemptions/Allowances	Number		
DONALD M. ACHER	002383	016-44-0297	Single	US-0/0 MA-0/0	00009574		
Code	Paygroup	Division	Department	Hire Date	Period Start	Period End	Pay Date
ENG INC	1	00	9920	08/09/93	02/14/05	02/27/05	03/10/05
Taxable Earnings	Rate	Units	Current	Year To Date	Gross Pay	Current	Year To Date
Special Incentive Pay			82.57	82.57	W2 Gross	82.57	82.57
Total			82.57	82.57			
Taxes				Net Pay	51.57		
Federal Income Tax			20.54	20.54			
Social Security (FICA)			5.12	5.12			
Federal Medicare			1.20	1.20			
Massachusetts Income Tax			4.04	4.04			
Total			31.00	31.00			

TAB 6.A

Agreement No. BA20194

[REDACTED] a Delaware corporation with offices at 240 E. 38th St. NY, NY 10016 on behalf of itself and on behalf of its AFFILIATES (see Appendix T), and FUJITSU NETWORK COMMUNICATIONS, INC., a California corporation with offices at 2801 Telecom Parkway, Richardson, Texas, 75082 (hereinafter referred to as "Supplier"). Under the Agreement, Purchaser and any AFFILIATES which directly places an Order or for whom Purchaser places an Order agree to purchase and Supplier agrees to sell PRODUCTS, HARDWARE and/or SERVICES and to license SOFTWARE, DOCUMENTATION and RELATED DOCUMENTATION when ordered by Purchaser in accordance with the terms and conditions stated in this Agreement. Hereinafter, the term "Purchaser" will individually or collectively mean Purchaser and/or any AFFILIATE of Purchaser unless the context in which the term is used intends otherwise.

Whereas, Purchaser has issued to Supplier a Request For Proposal (RFP), No. 01-0184-DN dated October 2, 2001, and a Request for Revised Proposal (RRP), No. 01-0184-DN dated January 18, 2002, setting forth certain requirements and other information incident to the purchase and deployment of Next Generation Add Drop Multiplexers ("NGADM's") and associated SERVICES, and a license of specified associated Software (including Firmware) and DOCUMENTATION and RELATED DOCUMENTATION. The above-referenced documents are attached hereto as Appendix B.

Whereas, Supplier has reviewed and analyzed the RFP and has developed and submitted to Purchaser its Proposal dated November 12, 2002, its Response to the RRP dated February 13, 2002 as well as meetings between the parties, written representations and commitments put forward by Supplier in various documents, e-mails and letters exchanged between the parties specifically addressing questions and comments posed by Purchaser relating to Supplier Proposal responses (hereinafter collectively the "Proposal")

Whereas, said Proposal sets forth Supplier's offer and representations including, without limitation, the features, functionality, delivery schedules, conclusions, recommendations, and benefits incident to Supplier's PRODUCTS, HARDWARE, SYSTEM, SOFTWARE, and SERVICES, proposed by Supplier to provide Purchaser with the functional and operational performance capabilities and capacities specified in the RFP; and

Whereas, based on the representations contained in Supplier's Proposal, and in reliance upon the expertise of Supplier in developing, designing and delivering SYSTEMS, Purchaser desires to buy PRODUCTS and SERVICES from Supplier and Supplier desires to supply PRODUCTS and SERVICES to Purchaser under the terms and conditions set forth herein; and

Agreement No. BA20194

2.8.1 RELATED DOCUMENTATION shall mean that DOCUMENTATION, specific to the operation and use of SOFTWARE, such as but not limited to, flow charts, logic diagrams, program listing (other than SOURCE CODE), program descriptions and specifications.

2.8.2 LICENSED MATERIALS shall mean the DOCUMENTATION, SOFTWARE and RELATED DOCUMENTATION defined in Sections 2.4 and 2.8 and Sub Section 2.8.1 and for which licenses are granted by Supplier under this Agreement.

2.9 SOURCE CODE shall mean a computer program in the form of high-level language that generally is not directly executable by a processor.

2.10 OPERATIONS SUPPORT SYSTEM ("OSS") shall mean that software, interface hardware and processor that interfaces with the PRODUCT in the Purchaser's Network and which (OSS) is required for the operation, administration and/or support (including but not limited to testing, surveillance, billing, provisioning and inventory) of the Purchaser's Network.

2.11 SYSTEM shall mean all components of the Supplier's PRODUCT(S), purchased hereunder, functioning together, performing and interoperating as a fully integrated and efficient whole with itself and all other Supplier-provided switching, transport, transmission elements, other facilities and equipment in the Purchaser's network in accordance with the requirements and specifications incident to this Agreement or any Order(s) issued pursuant to this Agreement, provided such other facilities and equipment: (i) operate together in accordance with standards contained in industry publications by recognized standards bodies; or (ii) operate in accordance with SPECIFICATIONS contained in this Agreement.

2.12 WORK shall mean the provision of PRODUCT and DOCUMENTATION and the performance of SERVICES pursuant to this Agreement or any Order(s) issued pursuant to this Agreement.

2.13 SPECIFICATIONS shall mean those specific requirements and detailed specifications set forth in the Requirements Documents.

ARTICLE 3

AGREEMENT TO PURCHASE

3.1 SCOPE OF AGREEMENT

[REDACTED]

Agreement No. BA20194

[REDACTED]

Purchaser, shall on an as-needed basis, assign Supplier as one (1) of a majority award suppliers among three (3) or fewer suppliers to satisfy requirements for PRODUCT, excluding FLM PRODUCT, to be deployed in Purchaser's regulated local exchange network. Purchaser affirms that no supplier will individually be awarded a specific dollar amount or percentage of Purchaser's NGADM business during the term of this Agreement

3.2 TERM OF AGREEMENT This Agreement shall commence on the date first above written and, unless otherwise terminated pursuant to the provisions of this Agreement, shall continue for a three (3) year term. Thereafter, this Agreement shall be renewable at the option of Purchaser with notice to Supplier sixty (60) days in advance of the expiration date. This Agreement shall be effective for PRODUCTS and SERVICES ordered by Purchaser during the term and any extensions thereof.

3.3 INTERRELATIONSHIP WITH ORDERS Whenever the provisions of an Order conflict with the provisions of this Agreement, the typewritten provisions of the Order which have been mutually agreed upon by the parties in writing and which are not pre-printed as part of a form shall control and take precedence over the conflicting provisions of this Agreement, but only for purposes of such Order and, except for the conflicting provisions of such Order, the terms and conditions of this Agreement shall not be deemed to be amended, modified, canceled, or waived. Conflicting pre-printed provisions on the reverse or front of the forms belonging to either party shall be deemed deleted.

3.4 GOVERNMENT CONTRACT PROVISIONS Upon ACCEPTANCE by Supplier which ACCEPTANCE may be withheld by Supplier depending on the government provisions that may be applicable to such Order, Orders placed pursuant to this Agreement containing a notation that the PRODUCT is intended for use under government contracts shall be subject to the then current government provisions referenced thereon or in attachments thereto. Such notation on the Order shall specify "for Government Use."

3.5 NON-EXCLUSIVE MARKET RIGHTS It is expressly understood and agreed that this Agreement neither grants to Supplier an exclusive privilege to sell or provide to Purchaser any or all PRODUCTS or SERVICES of the type described in this Agreement which Purchaser may require, nor does it require the purchase of any PRODUCTS or SERVICES from Supplier by Purchaser. Supplier understands and agrees that Purchaser is free to and may contract with other manufacturers and Suppliers for the procurement of comparable PRODUCTS or SERVICES.

Agreement No. BA20194

connection with any claims by Supplier that Purchaser has materially breached its obligations hereunder. Such independent obligation shall continue for ninety (90) days from the date upon which Purchaser receives written notice of such alleged breach from Supplier. Supplier undertakes this independent obligation without prejudice to any rights or remedies it may otherwise have in connection with any dispute between Supplier and Purchaser.

ARTICLE 32

ENTIRE AGREEMENT

This instrument, the Appendices and Schedules attached and the Order(s) attached hereto, or hereafter issued under this Agreement, constitute and embody the entire Agreement by and between the parties hereto and supersede all prior oral or written agreements or understandings, if any, between them with respect to the subject matter of this Agreement. In the event of a direct conflict between a specific term or condition of this Agreement and a specific term or condition in an Order, issued and accepted by the parties, the specific term or condition in the Order shall take precedence and control, but only for purposes of that individual Order. All Orders placed by Purchaser shall be deemed to incorporate the terms and conditions of this Agreement as well as any supplemental terms and conditions agreed to by the parties in writing. This Agreement shall not be modified or amended except by a writing signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have set their hand and seal intending to be legally bound this 30th day of April, 2003.

FUJITSU NETWORK
COMMUNICATIONS, INC.

TELESECTOR RESOURCES GROUP, INC.

d/b/a Verizon Services Group

Signature: GBU

Signature: George S. Dowell

Print Name: George B. Chase

Print Name: GEORGE S. DOWELL

Title: Group President & COO

Title: SVP - CORPORATE Sourcing

Date: 5/2/03

Date: 5/9/03